STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION
DOCKET NO. 96-168-W\S
PRE-FILED TESTIMONY OF J. RICHARD SAYERS

QUESTION: WOULD YOU PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD?

ANSWER: My name is J. Richard Sayers. I live with my wife at 78 Bittern Court, Kiawah Island, South Carolina. We have been full-time residents at that location since May of 1981.

QUESTION: MR. SAYERS, PLEASE EXPLAIN YOUR BUSINESS BACKGROUND AND FORMAL EDUCATION.

ANSWER: Before I retired in 1981, I had worked for 34 years for Monsanto Company at various locations. By training I have Bachelor's and Master's Degrees in Chemical Engineering.

QUESTION: MR. SAYERS, HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

ANSWER: I have testified before this Commission on two previous occasions, once in 1985 and again in 1992. I am here today to testify in opposition to the Kiawah Island Utility's application for a rate increase.

QUESTION: MR. SAYERS, PLEASE STATE WHAT ASPECTS OF THE RATE INCREASE YOU ARE OPPOSING.

ANSWER: While I believe there are many things wrong with this rate increase application, I would like to focus on just one: the

continued use by the Kiawah Island developer, Kiawah Resort Associates, L.P., of his wholly-owned utility, Kiawah Island Utility, Inc, as a means of enhancing his income by improperly shifting his development costs to the Utility's customers. This has been occurring for many years and is particularly flagrant in the rate increase application now before you.

On page D2-2 and again in Exhibit H - Capital Improvement Schedule, details of gross plant additions totaling over $2,750,000 are provided. Very little of that amount has anything to do with me, or with the overwhelming majority of the Utility's customers. But it has everything to do with developer decisions and with the developer's future customers.

When the development of Kiawah Island began 21 years ago, the developer provided the initial water and sewer facilities and we, as buyers of his lots and condominium units and as builders of our homes, began paying for utility services. Until we built our homes we paid an Availability Fee for the water and sewage capacity that was held for our eventual use. This was a fair and reasonable arrangement.

What has evolved in more recent years is not at all fair and reasonable. As the developer has continued to develop the Island, generally west to east, he has added to the water and sewage treatment complex in order to be in position to serve the new buyers of his lots. Step by step the cost of this new capacity has been shifted to the present Utility customers.

This is a fundamentally unfair system and it is being

recognized as such by a steadily increasing number of cities and towns across America. The latest information I have is that by 1993 over 20 states had adopted impact fee enabling legislation. Impact fees shift a portion of the cost of providing new capacity to serve new growth from the present population to the new development requiring the increased capacity. Impact fees cover two types of charges: Capacity Charges designed to make new development pay for a pro rata share of what is already in place; and Expansion Charges designed to make new development pay for what must be added to accommodate it. These fees typically involve the protection of rate payers (and tax payers) from the burdensome cost of new developments in localities having municipal utilities. The situation is substantially analogous to ours on Kiawah where we are faced with a developer and his captive utility.

The Town of Kiawah Island does not as yet have an impact fee ordinance and we are therefore completely dependent upon the Public Service Commission to protect us from developer exploitation.

QUESTION: MR. SAYERS, ARE THERE OTHER ELEMENTS IN THE RATE INCREASE APPLICATION THAT YOU OPPOSE?

ANSWER: Part of the process by which the developer shifts his development costs to his Utility's present customers involves the classification of facilities and equipment used for water distribution versus water transmission and sewage collection

versus sewage transmission. All decisions are made by the developer. It is in his interest to have as much as possible termed "transmission" which he then sells to the Utility and as little as possible termed "distribution" or "collection" which he must pay for and donate to the Utility. We Utility customers don't enjoy the protection in this decision making process that would be provided by an independent Utility Co.

A subtle aspect of this problem is the simple fact that Kiawah Island is a long, narrow island. The water and sewer systems are not hub and spoke but rather require the distribution of water and the collection of sewage to and from points stretching out for considerable distances in generally parallel paths. This of course leads to layouts with considerable looping in the water distribution systems and aggregating in the sewage collection systems.

In the critical decision on whether a line is distribution, collection, or transmission, the developer consistently uses his consulting engineering firm to defend his self-serving decisions. Line diameter and line interconnections appear to be the principal criteria justifying the transmission designation. The fact that these lines are flanked by, and serve, hundreds upon hundreds of lots and homes is ignored.

QUESTION: MR. SAYERS, ARE YOU PROPOSING A REMEDY FOR THE LACK OF INDEPENDENCE OF THE UTILITY AND ITS ADVERSE IMPACT ON KIAWAH RATE PAYERS IN THIS AREA OF LINE AND SYSTEM CLASSIFICATION?

ANSWER: Yes. A simple and fair set of decision rules for use in determining the classification of a line or system that is easy to implement and easy to understand should be adopted. The rules would recognize the obvious function of the line or system and read as follows:

> **If water passes through a pipe line and is, or will be, distributed to homes located along that pipe line, then that line is a water distribution line. Size and interconnection do not change its distribution function, and therefore its classification. It will be provided by the developer and donated to the Utility.**
>
> **If sewage passes through a sewage system that has been, or will be, collected from homes that have been or will be located along that system, then that system is a sewage collection system. Size, interconnection, and method of flow do not change its collection function and therefore its classification. It will be provided by the developer and donated to the Utility.**
>
> **If water passes, or is to pass, through a pipe line and is not, and will not be, distributed to individual Utility customers from that line, then that line is a water transmission line and it will be classified as such. It will be provided by the developer and sold to the Utility.**
>
> **If sewage passes, or is to pass, through a sewage system but has not and will not be collected from individual Utility customers, then that sewage system is a sewage transmission system and it will be classified as such. It will be provided by the developer and sold to the Utility.**

This simple set of rules based on the mission and intent of the lines and systems clearly separates what the developer has installed to render his lots saleable from that which the Utility

must install to perform its function of providing water and treating sewage.

QUESTION: MR. SAYERS, DO YOU HAVE ANY FURTHER MATTERS TO BRING TO THE COMMISSION'S ATTENTION?

ANSWER: Past misclassification should be corrected. Then, requiring the Utility to properly classify the components of its water and sewage systems and then to right the economic wrong that has been done to the Utility's customers does not present a particularly difficult problem for the Utility.

First, there is really only one company involved. Mr. Clarkson is the Chief Operating Officer of the developer and the Treasurer of the Utility. Also, four years ago, we saw how the developer, using his engineering consultant, could reconstruct costs for various components of the Utility, even though no invoices and in many cases no contracts for the work, done many years earlier, were available. We also saw how the developer could sell these system components to the Utility (even though there was sworn testimony from the preceding developer that they had already been donated, and even though the components had been used by the Utility for many years). And, finally, we saw how the developer could require the Utility to borrow money to pay for the components. <u>This same process can work in reverse</u>.

We recognize that the Public Service Commission does not regulate developers. But it does regulate Utilities and can effect the corrections we are pleading for by simply informing the Utility that no rate increase will be granted until such time

as it can show the Commission that all misclassifications have been corrected and the financial impacts of the misclassifications have been remedied.

QUESTION: MR. SAYERS, DO YOU HAVE ANY FURTHER TESTIMONY REGARDING THE DEVELOPMENT PROCESS?

ANSWER: When considering the Kiawah Island Utility Company, its development in a generally west to east direction as the developer sells additional lots, is important. Also, it should be noted that the Utility's development has lagged behind, and deviated from, the 1984 plan laid out by its former consultant, CH_2M-Hill. The capital additions presented in the rate increase application now before the Commission reflects the Utility's effort to catch up.

As the developer has moved eastward he has placed ever greater stress on landscaping and landscape planting, and the Island now has five golf courses. As one result, a 1994 Gage-Babcock & Associates report states that water consumption on Kiawah is "atypical" as "the major use of the water is for irrigation."

Compounding the Utility's problem of providing enough water to meet the demands of the new development is the developer's decision, apparently for aesthetic reasons, not to build the planned elevated storage tank on the east end of the Island. This would have helped provide sufficient water pressure for all uses including emergency use. Large volumes of irrigation water and large numbers of orifice controlled irrigation loads (that

bleed off the pressure needed in emergencies) require the installation of large lines to reduce pressure drop and large pumps to provide the volumes and pressures needed in emergencies. And these conditions also call for special controls to quickly shut off non-essential demand and bring on additional pumping capacity. Most of the new capital included in this rate increase request represents a response to developer decisions on the details of how he would develop the Island. It is the developer's responsibility to make these decisions, but his decisions carry a cost and he should bear it.

The developer's lots are saleable only because he promises to distribute water, collect sewage, and install and supply appropriately positioned fire hydrants. These promises represent the costs of development and they should be his costs. There would be no question that he would bear a dominant share of these costs if he were dealing with an independent Utility. Most of the capital expenditures used to justify this rate increase should be disallowed.

Much of the remaining development of Kiawah Island involves the eastern "fingers" of land. While dead-end water distribution systems should be, and I'm sure will be, avoided as far as possible, looping on these fingers will be difficult. The only answer under these circumstances is the installation of large diameter lines. The Utility should be instructed through this proceeding that the decision rules set out earlier in my testimony for designating distribution, collection, and

transmission must be followed and that no diameter based exceptions will be permitted.

QUESTION: MR. SAYERS, DO YOU HAVE CONCERNS REGARDING THE LAND LEASE AGREEMENT BETWEEN THE UTILITY AND THE DEVELOPER?

ANSWER: Yes. The Utility has entered into a very unfair and one-sided lease agreement with the developer for the use of a piece of land located beside the Utility's aeration lagoons. The leased land has been excavated and lined to form an additional lagoon for holding a blend of treated effluent, well water, and potable water destined for golf course irrigation.

By way of background, there were four independently owned golf courses on Kiawah (Cougar Point, Turtle Point, Osprey Point, and The Ocean Course) -- and then the developer built his own (The River Course). The four courses had been purchasing treated effluent, usually in a blend with well water, for years. The treated effluent represented an inexpensive source of water for golf course irrigation and golf course irrigation represented an excellent method of treated effluent disposal for the Utility. Two of the golf courses have their own storage and blending lagoons. There is also a Utility operated well at one course and another course dug its own well.

Only the developer and his Ut
elite know the exact sequence of events that has lead to the present situation. One thing is certain. No independent Utility would allow itself to be forced into signing a bad lease costing $66,000 per year <u>in order to serve a customer it didn't need,</u>

with a product (treated effluent) that it was sold out of. At a minimum an independent utility would require this new customer to handle its own storage or donate and excavate the required land. A lease with a Utility, providing a 12% yield on a land value that will be increased but never decreased to match inflation, and increased but never decreased to reflect a more favorable appraisal, yet a lease that can be terminated unilaterally, and without penalty, is just too one sided a deal.

I respectfully ask the Public Service Commission to completely disallow any of this lease expense.

QUESTION: DOES THIS CONCLUDE YOUR TESTIMONY?

ANSWER: Yes, it does.

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CERTIFICATE OF MAILING

We hereby certify that on this 18th day of November, 1996, we served a copy of the Intervenor Kiawah Property Owners Group, Inc. foregoing Pre-filed Testimony of J. Richard Sayers, upon:

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DATED at Charleston, South Carolina, this 18th day of November, 1996.

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